

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Living Innovations Support Services Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses

Date of Hearing: January 12, 2015

Case No.: 49253

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$922.50 in unpaid wages for hours spent traveling between clients. She amended her claim at the hearing to \$710.00 because her original claim asked for wages earned outside the thirty-six month statute of limitations under RSA 275:51.

She argued the employer did not notify until October 2014 that she was entitled to travel time between clients. She did receive mileage between clients, but not pay for the time.

The employer denied the claimant was not paid for all time worked and asserted the claimant received an overpayment of 9.5 hours. Further, the claimant owes them 5.5 hours, which they are not going to attempt to recover.

They argued the claimant received a handbook, for which she signed a receipt upon hire on July 8, 2011, with a revised handbook date of April 25, 2011. She also signed a receipt for an updated handbook on October 25, 2013, with a revised handbook date of October 3, 2013. The policy contained in the handbook explained travel time pay. She participated in a new hire training which reviewed the travel time policy. The policy had been reviewed at most staff meetings which the claimant had attended.

The hearing was left open until 4:30pm on January 12, 2015, for the employer to submit a copy of the travel time policy in the handbook. The employer submitted the documentation within the required time frame. The claimant responded to the employer's documentation within the required timeframe provided.

The claimant responded arguing the policy revision date October 19, 2011, and her date of hire was July 8, 2011.

FINDINGS OF FACT

The claimant worked for the employer from July 8, 2011 through December 2014.

The claimant previously submitted schedules, from the WhenToWork system, for 2012, 2013 and 2014 to show the hours she had worked. She also previously submitted only a few pay stubs to show the hours paid. In most of instances for which she provided a paystub, the claimant had been paid greater than the number of hours of the schedule, but not as much as she had been claiming as due.

The employer provided credible testimony that the claimant was not paid based on the schedules in the WhenToWork system, but on timesheets. They previously submitted time sheets completed by the claimant. The claimant had not been properly completing the travel time section on the timesheets.

The schedules provided by the claimant did not show conclusive evidence that the claimant worked the exact hours scheduled nor did the timesheets provided by the employer show any conclusive evidence that the claimant had not been paid for travel time during her employment.

The majority of the small number of pay stubs provided show the claimant received pay for more hours that shown on the WhenToWork schedule.

The Hearing Officer is unable to determine if any wages are due to the claimant.

The claimant has the burden of proof in this matter to show that she did not receive wages for the travel time that she is claiming. She failed to meet that burden as her story is only as credible, not more credible, than the employer's.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed wages.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 12, 2015

MJD/kdc